Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 DODE-00 NSAE-00 USIA-06
TRSE-00 ERDA-05 CIAE-00 COME-00 /032 W
----------054398 110508Z /11
R 102056Z NOV 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 1577

C O N F I D E N T I A L SECTION 01 OF 02 PARIS 33070

USOECD

EXCON

E.O. 11652: XGDS1
TAGS: ESTC, COCOM
SUBJ: PROPOSED CHANGES IN COCOM PROVISIONS IN CERTAIN
NOTES PROVIDING FOR LISTING OF EQUIPMENT IN LIST
ANNEX B.

REFS:) STATE 266554, B) PARIS 30710, C) PARIS 26542

1. USDEL INFORMED COMMITTEE NOV. 8 THAT U.S. OPPOSED ANY AMENDMENT TO PRESENT THIRTY-DAY PERIOD WHICH WOULD PROVIDE LESS THAN THIRTY-DAYS CONSIDERATION OF RESPONSES TO TECHNICAL QUESTIONS.US COULD AGREE, HOWEVER, TO ORIGINAL GERMAN PROPOSAL PROVIDING FOR 30-DAY LIMIT FOR ASKING QUESTIONS AND 30 DAYS FOR STUDY OF ADEQUATE RESPONSE. USDEL EXPLAINED THAT PRESENT RULES ALREADY PROVIDED A PERIOD OF 30 DAYS AFTER RECEIPTOF "A FULL TECHNICAL DESCRIPTION." IN U.S. VIEW THIS MEANT, DEL SAID, THAT IF TECHNICAL CLARIFICATION WAS NECESSARY THE ORIGINAL SUBMISSION COULD NOT BE CONSIDERED AS HAVING PROVIDED THE FULL DESCRIPTION REQUIRED. USDEL RECALLED THAT U.S. HAD NEGOTIATED THIS PROVISION WITH INTENTION OF PERMITTING DELEGATIONS TO SEEK CLARIFICATION OF ANY
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TECHNICAL INFORMATION NECESSARY TO INSURE WHETHER OR NOT THE TECHNICAL CHARACTERISTICS OF THE EQUIPMENT MADE IT ELIGIBLE FOR LISTING UNDER THE NOTE. CONSIDERATION OF SUCH RESPONSES WOULD OFTEN REQUIRE FULL 30-DAY REVIEW PERIOD, HE SAID. USDEL ALSO SUGGESTED THAT SECRETARIAT OR STUDY GROUP UNDERTAKE RESEARCH INTO ORIGINS OF THIS WORDING TO CLARIFY THIS ORIGINAL INTENTION.

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2. DESPITE U.S. ARGUMENTS, CHAIRMAN AND MOST OTHER DELEGATIONS RESISTED U.S. INTERPRETATION. UKDEL ARGUED THAT
THAT U.S. RATIONALE THAT 30-DAY PERIOD ONLY BEGINS AFTER ALL DELEGATIONS ARE SATISFIED THAT A FULL TECHNICAL DESCRIPTION HAS BEEN PROVIDED COULD RESULT IN NO TIME LIMIT AT ALL FOR QUESTIONS OR CLARIFICATIONS, LEAVING REQUESTS UNRESOLVED INDEFINITELY. CHAIRMAN NOTED THAT PRACTICE OF COMMITTEE IN SEVERAL LISTING REQUESTS WHERE QUESTIONS WERE ASKED AND TIME EXTENSIONS GRANTED DID NOT BEAR OUT U.S. INTERPRETATION. BELGIAN DEL CRITICISED U.S. FOR TRYING TO DIG BACK INTO A RECORD 6 YEARS OLD TO COME UP WITH AN INTERPRETATION WHICH SUITED THEM DESPITE FACT THAT COMMITTEE NOW FELT THAT NEW APPROACH WAS NECESSARY TO MAKE THESE LISTING PROCEDURES WORKABLE. FRENCH DEL INSISTED THAT IT WAS CLEAR THAT CURRENT PROCEDURE PROVIDED FOR ONLY 30-DAYS TO RESOLVE SUCH LISTING REQUESTS IN ALL CASES. HIS AUTHORITIES COULD NEVERTHELESS AGREE TO (1) CHAIRMAN'S ORIGINAL SUGGESSTION THAT CLOCK SHOULD STOP WHEN QUESTIONS WERE ASKED AND ONLY RECOMMENCE UPON ADEQUATE RESPONSE, OR (2) BELGIAN PROPOSAL LIMITING QUESTIONS TO FIRST 20-DAYS. THESE QPPROACHES, HE ARGUED, WOULD ENCOURAGE DELEGATIONS TO UNDERTAKE AN EARLY REVIEW OF THESE REQUESTS AND TO POSE QUESTIONS EARLY WITHIN THE CONFIDENTIAL

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30-DAY PERIOD. GERMAN DEL REPORTED THAT HE HAD RECEIVED NEW INSTRUCTIONS THAT HE COULD NOW ONLY AGREE TO CHAIRMAN'S ORIGINAL SUGGESTION OR ALTERNATIVELY TO PROVIDING FOR 40-DAY OVERALL PERIOD (DURING WHICH CLOCK WOULD ALSO STOP UNTIL ADEQUATE RESPONSES TO QUESTIONS WERE RECEIVED). CANADIAN DEL ALSO SUPPORTED CHAIRMAN'S ORIGINAL SUGGESTION. UKDEL WAS ONLY DEL OTHER THAN US THAT INDICATED THAT HE COULD ACCEPT 30 PLUS 30 SOLUTION ORIGINALLY PROPOSED (BUT NOW ABANDONED BY GERMAN DEL.

3. NOTING THAT NO OTHER DELEGATION SUPPORTED U.S. INTERPRETATION, CHAIRMAN SUGGESTED THAT POSSIBLE COMPROMISEMIGHT BE TO REQUIRE THAT QUESTIONS BE POSED WITHIN FIRST 15 OR 20 DAYS AND THAT 30 DAYS BE ALLOWED FOR STUDY OF RESPONSES. HE RESCHEDULED MATTER FOR COCOM MEETING NOV. 15.

4. COMMENT: USDEL BELIEVES THAT DEPT. SHOULD RECONSIDER ITS OPPOSITION TO ACCEPTING UK SUGGESTION AS POSSIBLE FALL BACK POSITION IN LIGHT OF GENERAL COMMITTEE

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OPPOSITION TO U.S. INTERPRETATION. UKDEL HAD SUGGESTED
THAT TOTAL TIME FRAME WOULD BE EXTENDED FROM
30 TO 45 DAYS WITH QUESTIONS BEING POSSIBLE AT ANY TIME
DURING FIRST 30 DAYS. IF QUESTIONS WERE POSED EARLIER
THAN THE 30TH DAY THE PERIOD FOR CONSIDERATION OF THE
RESPONSE WOULD BE EVEN LONGER. OFTEN THESE QUESTIONS
ARE ONLY OF A CLARIFICATION NATURE AND DO NOT REQUIRE
A COMPLETELY NEW ASSESSMENT AS TO WHETHER OR NOT THE
EQUIPMENT IS ELIGIBLE FOR LISTING UNDER THE NOTE. A RE-
VIEW OF RECENT NOTE 4 LISTING CASES, INDICATES THAT
THE U.S. HAS BEEN ABLE TO STATE A FINAL POSITION WELL
WITHIN THE 45-DAY PERIOD CONTEMPLATED BY THE UK PROPOS-
AL. IN THE DANISH REQUEST (COCOM DOC. DEF (77)1565/21)
ONLY FOUR DAYS ELAPSED BETWEEN THE TIME U.S. ASKED ITS
QUESTION, DANES RESPONSED AND U.S. ADOPTED FINAL POS-
ITION. IN FRENCH REQUEST (COCOM DOC. DEF (77) 1565/7
U.S. FINAL POSITION WAS STATED 7 DAYS AFTER FRENCH RES-
PONSE TO U.S. QUESTIONS. IN JAPANESE REQUEST (COCOM
DOC. DEF (77) 1565/18 U.S. POSED ITS QUESTIONS ON 22-
ND DAY AFTER REQUEST WAS SUBMITTED AND ADOPTED FINAL
POSITION 22 DAYS AFTER JAPANESE RESPONSE (A TOTAL OF
44 DAYS UNDER UK PROPOSAL).
5. USDEL AGREES THAT SOME LISTING SUBMISSIONS MAY BE SO
FAULTY AS TO REQUIRE EXTENSIVE QUESTIONS BEING POSED
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AND RESULTING IN RESPONSES THAT ARE TANTAMOUNT TO NEW SUBMISSIONS. INSUCH CASES U.S. WOULD BE ABLE TO OBJECT TO ORIGINAL LISTING REQUEST AS IT DID IN JAPANESE REQUEST (DEF. (77) 1091/26) INDICATING SHORTCOMING OF SUBMISSION AND INVITING RESUBMISSION WITH ADDITIONAL TECHNICAL INFORMATION. SUCH ACTION WOULD PROVIDE U.S. AND ALL OTHER DELEGATIONS WITH FULL 45-DAY PERIOD TO STUDY ANY RESULTING RESUBMISSIONS.

6. MAINTAINING VIEW THAT PRESENT PROVISION WOULD BE BETTER THAN ANY PROPOSED CHANGES (OTHER THAN ORIGINAL GERMAN PROPOSAL) OVERLOOKS SOLID COMMITTEE OPPOSITION TO U.S. INTERPRETATION AND WEIGHT OF PRECEDENT AGAINST U.S. VIEW (SEE PARIS 26542). EACH TIME U.S. WERE TO POSE QUESTIONS UNDER CURRENT PROCEDURE IT WOULD BE FACED WITH COMMITTEE'S OPPOSITION TO U.S. INTERPRETATION AND WOULD BE CRITICIZED FOR FAILING TO LIVE WITHIN COMMITTEE'S PROCEDURES. SEVERAL DELEGATIONS WOULD ALSO UNDOUBTEDLY RECALL THAT U.S. HAD BLOCKED EFFORT MADE BY COMMITTEE TO REFORM THIS PROCEDURE IN ORDER TO PROVIDE FOR QUESTIONS AND ADDITIONAL TIME FOR CONSIDERATION OF RESPONSES.

7. FOR THESE REASONS USDEL RECOMMENDS THAT U.S. AUTHORIZE DEL TO ACCEPT UK SUGGESTION AS FALL BACK POSITION IF STRONG OPPOSITION TO U.S. INTERPRETATION AND 30 PLUS 30 SOLUTION REMAINS THROUGH NOV. 22 MEETING. (END COMMENT).
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